

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ELWOOD JONES, JR.	:	
Petitioner,	:	CASE NO. C-1-01-564
v.	:	JUDGE THOMAS M. ROSE
MARGARET BAGLEY, WARDEN	:	MAGISTRATE JUDGE MERZ
Respondent.	:	

RESPONDENT'S MOTION FOR A STATUS CONFERENCE

Respectfully submitted,

**JIM PETRO
ATTORNEY GENERAL**

s/ Tara L. Berrien
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COUNSEL FOR RESPONDENT

Respondent respectfully requests a status conference in order to assess the current state of discovery that this Court has ordered.

Petitioner, Elwood Jones (hereinafter “Jones”), an Ohio inmate sentenced to death for the aggravated murder, burglary, and robbery of Rhoda Nathan, is currently before this Court challenging his conviction and sentence in federal habeas corpus proceedings. On June 24, 2002, this Court granted Jones discovery to depose the trial prosecutors, Mark Piepmeier and Seth Tieger; to depose Jones’ trial counsel, Julius Sanks and Catherine Adams; and to obtain records from the Hamilton County Coroner’s Office, the Cincinnati Police Department, the Blue Ash Police Department, and the Hamilton County Prosecutor’s Office. (R. 24, Decision and Order). This Court set December 31, 2002 as the deadline to complete discovery. (R. 24, Decision and Order). On January 3, 2003, Jones filed a motion to extend the discovery deadline, which Respondent did not oppose the extension. (R. 32, Motion). This Court extended the discovery deadline until January 31, 2003.

On February 3, 2003, this Court also granted Jones leave to depose two jurors, Kenneth Brewer and Mary Schultz, by March 31, 2003. (R. 33, Decision and Order). On March 31, 2003, Jones, with Respondent’s agreement, asked this Court to extend the discovery deadline until April 11, 2003. On April 9, 2003, habeas counsel for Jones informed Respondent’s counsel that Juror Brewer was unavailable, at that time, to be deposed and that they no longer wished to depose Juror Schultz. Juror Schultz subsequently provided Respondent’s counsel an affidavit, which was made a part of this Court’s record on August 11, 2003. (R. 38, Motion; R. 39, Order).

After deposing Assistant Prosecutor Piepmeier on January 29, 2003, Jones’ habeas counsel waived deposing Assistant Prosecutor Tieger. On February 5, 2003, it was brought to the attention of Respondent’s counsel that Tieger recalled a plea bargain attempt made before

Jones' trial, information which Piepmeier did not remember during his deposition. Respondent's counsel immediately contacted Jones' habeas counsel about possibly deposing Tieger. Counsel did not respond to Respondent's suggestion or attempt to schedule the deposition until December 2003, at which time Respondent's counsel was unavailable. Furthermore, Jones' trial counsel and Juror Brewer have not been deposed.

The discovery deadline has past, yet all depositions have not been conducted. Therefore, Respondent respectfully requests a status conference for this Court and the parties to discuss the appropriate course of action in this matter.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing RESPONDENT'S MOTION FOR A STATUS CONFERENCE has been hand-delivered to Gregory Meyers, Ohio Public Defender's Office, 8 East Long Street, 11th Floor, Columbus, Ohio 43215-0587 **and** has been forwarded, via regular U.S. mail, postage pre-paid, to James David Owen, 5354 North High Street, Suite 3D, Columbus, Ohio 43214, on this 20th day of January, 2004.

s/ Tara L. Berrien
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